alternative livestock and the character of the regulation weigh heavily in favor of this conclusion.

5. Conclusion of Fifth Amendment Analysis

¶240 In conclusion, based on the foregoing *Penn Central* analysis, I would hold that I-143 effected a taking of the Ranchers' right to transfer their alternative livestock ranch licenses and businesses, of the goodwill and going-concern value of their businesses, of the fixtures related to their alternative livestock operations, and of their alternative livestock. I would further hold that the Ranchers are entitled to just compensation for these takings. I would reverse the District Court's judgment and remand for further proceedings related to the issue of just compensation.

IV. CONCLUSION

¶241 *You take my house, when you do take the prop*
That doth sustain my house; you take my life,
When you do take the means whereby I live.[6]

¶242 Arguably, I-143 was a fraud on the voters. It purported to address a number of "problems" associated with alternative livestock ranching, but it did not actually address any of those problems—at least, not directly. Instead, it eliminated the means whereby the Ranchers businesses existed, thereby destroying those businesses. The voters were not told that the Initiative was a "carefully crafted" end-around the Constitution that could lead to a decision from this Court holding that the State may destroy the goodwill and going-concern value of a Montana business, substantially (if not completely) devalue

[6] William Shakespeare, The Merchant of Venice, Act IV, Scene 1, lines 375-77.

the business's assets, and deprive the business owner of her right to sell, assign, or otherwise transfer the business—all without having to pay just compensation.

¶243 The Court invokes notions of "fairness and justice" to deny the Ranchers any compensation for the out-and-out obliteration of their businesses. I-143 was designed to shut down an industry that the State had facilitated, and even encouraged, for 83 years and to place the entire economic burden of doing so on the participants in that industry. It is difficult to see any fairness or justice in this bait and switch, particularly since the Initiative was promoted as addressing legitimate public concerns shared not only by the Sportsmen, but by the public as a whole. A majority of voters—specifically, 204,282 of them—believed that the concerns cited by I-143's Proponents warranted "game farm reform." Given the severity of the burden this "reform" entailed, and given that the "reform" was intended to benefit all of Montana, fairness and justice require that the burden be spread among taxpayers through the payment of compensation, not disproportionately placed on the shoulders of the alternative livestock ranchers.

¶244 The economic impact on the Ranchers' various assets as a result of I-143 is unquestionably substantial. The character of the governmental action—total abrogation of property rights in and related to the Ranchers' businesses—is extraordinary. And the Ranchers' distinct investment-backed expectations in their ability to continue operating their businesses were quite reasonable in light of the history of alternative livestock ranching and the various assurances set out in the statutory scheme. "[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a

taking." *Mahon*, 260 U.S. at 415, 43 S. Ct. at 160. In light of the foregoing, I-143 went too far, and just compensation is due.

¶245 Aside from the immediate impact of the Court's decision on the Ranchers, the Opinion will, obviously, serve as precedent in future Montana takings cases. This Dissent is long—and will, no doubt, be criticized by some for that. However, I believe that the important issues implicated by the Ranchers' takings claims justified setting out, in detail, the reasons why federal takings jurisprudence is confused, often inconsistent, certainly not bulletproof, and not necessarily worthy of this Court's "marching lockstep" with it. I hope this Dissent will give some future takings litigant the impetus and ammunition to challenge federal caselaw in arguing that her facially broader fundamental rights under Article II, Section 29 should be upheld.

¶246 Additionally, I am very concerned that the Court's decision here will be used—and, more likely, misused—in government's ever-expanding reach to regulate—and, ultimately, take—Montanans' broadly-defined property rights, without having to assume and spread amongst all taxpayers the economic burdens of that regulation and taking. Similarly, I am concerned that today's decision will encourage more "carefully crafted" initiatives and legislation which end-run constitutional guarantees and mislead voters with smoke and mirrors. Finally, I am concerned that, recognizing "If they can do it to them, they can do it to me," citizens will propose and enact initiatives of the recent I-154 ilk—poorly drafted, overbroad, and underinclusive. Indeed, we invite the Legislature to enact laws to protect constitutional rights when this Court refuses to define and enforce those rights.

¶247 It is for all of these reasons I would hold that the Ranchers have established compensable property interests and have demonstrated that those property interests were "taken" under the Fifth Amendment. I would reverse the District Court's judgment and remand this case for further proceedings on the issue of just compensation.

¶248 Therefore, I respectfully dissent from the Court's contrary decision.

/S/ JAMES C. NELSON

Justice Jim Rice and District Court Judge Wm. Nels Swandal, sitting for Justice Brian Morris, join the Dissent of Justice James C. Nelson.

/S/ JIM RICE
/S/WM. NELS SWANDAL